

Rule 1479: What Does It Mean for Defenders?

California Rules of Court, Rule 1479 goes to the core difference between adult criminal and juvenile court proceedings. In criminal court, the purpose of sentencing is punishment, and sentences are prescribed by law. Accordingly, once the sentencing has occurred, there is little for the attorney to do unless there is a parole or probation violation, or the lawyer is involved in appellate challenges. In juvenile court, by contrast, the purpose of state intervention is to provide care treatment and guidance enabling him or her to be "a law abiding and productive member of the community." (Cal. Welf. & Inst. Code § 202, subd. (b).) This is a much broader charge that requires ongoing monitoring and involvement by counsel. The dispositional phase is really just the beginning of the case for purposes of fulfilling the intent of juvenile court law. Rule 1479 affirms this in providing, "A child is entitled to have his or her interests represented by counsel at every stage of the proceedings, including post-dispositional hearings. Counsel must continue to represent the child unless relieved by the court upon the substitution of other counsel or for cause."

What does this mean for counsel? It means, first off, that the case file should not be closed on the date of the disposition hearing. It means further, that counsel must have a plan for staying in touch with each client, calendaring review hearings, and regularly reviewing progress reports. It also means that if the minor is not receiving the services ordered by the court, or the disposition plan turns out to be inappropriate, counsel will take the needed action to modify the court order and secure the services their client needs.

The following is a beginning checklist of things counsel should do in the post-disposition phase. You can add to this as you think through your cases.

- ___ Give client your contact information and envelopes addressed to you at disposition.
- ___ Make sure your client files a notice of appeal if they want appellate review.
- ___ Vigorously protest undue delay at 15-days review hearings under Welf. & Inst. Code section 737, subd. (b).
- ___ Contact client periodically to find out how things are going.
- ___ For DJJ wards read treatment plans; for other clients read progress reports.
- ___ If problems emerge, file 778 or 779 motions to recall or modify the dispositional order.
- ___ Make needed referrals (if your office does not handle such matters) to assure that your client receives needed assessments and linkages to regional center, special education or mental health services.
- ___ Participate in parole hearings and disciplinary hearings where confinement time may be extended.
- ___ Make needed motions (e.g., to reduce the offense) and assist your client in filing motions to seal their record. Assist your client in receiving a certificate of honorable discharge from DJJ.
- ___ Serve as a resource in appropriate cases when your client needs help getting into school or employment.
- ___ Do not put the case into storage. If you are transferred or leave your position, make sure the case is assigned to a specific person, and fill them in on needed background.

California Rules of Court, Rule 1479. Responsibilities of children's counsel in delinquency proceedings

(a) [Purpose] This rule is designed to ensure public safety and the protection of the child's best interest at every stage of the delinquency proceedings by clarifying the role of the child's counsel in delinquency proceedings. This rule is not intended to affect any substantive duty imposed upon counsel by existing civil standards or professional discipline standards.

(b) [Responsibilities of counsel] A child's counsel is charged in general with defending the child against the allegations in all petitions filed in delinquency proceedings and with advocating, within the framework of the delinquency proceedings, that the child receive care, treatment, and guidance consistent with his or her best interest.

(c) [Right to representation] A child is entitled to have his or her interests represented by counsel at every stage of the proceedings, including postdispositional hearings. Counsel must continue to represent the child unless relieved by the court upon the substitution of other counsel or for cause.

(d) [Limits to responsibilities] A child's counsel is not required:

- (1) To assume the responsibilities of a probation officer, social worker, parent, or guardian;
- (2) To provide nonlegal services to the child; or
- (3) To represent the child in any proceedings outside of the delinquency proceedings.

Rule 1479 adopted effective July 1, 2004.